

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

MICHAEL POWERS

PLAINTIFF

v.

CIVIL NO. 5:17-cv-26-KS-JCG

JODY BRADLEY, et al.

DEFENDANTS

**LARRY LEE'S MOTION FOR SUMMARY JUDGMENT
BASED ON FAILURE TO EXHAUST ADMINISTRATIVE REMEDIES**

COMES NOW, Defendant, Larry Lee, by and through counsel and pursuant to Fed. R. Civ. P. 56 submits his Motion for Summary Judgment Based on Failure to Exhaust Administrative Remedies, and in support thereof, would show unto the Court as follows:

1. At the time of filing his Complaint, Plaintiff was an inmate in the custody of the Mississippi Department of Corrections ("MDOC"). *Compl.* [1] p. 3. Plaintiff is seeking monetary damages from, among others, Larry Lee pursuant to 42 U.S.C. § 1983 for an alleged violation of his constitutional rights. [1] p. 4. Specifically, Plaintiff alleges that on October 16, 2016, an inmate set a fire using Styrofoam plates. [1] p. 4. Plaintiff claims that he tried to get help but passed out, and he did not receive adequate medical attention after the incident. [1] p. 4, [12], [16].

2. While it is unclear exactly what claims Plaintiff is making against Larry Lee, the undisputed material fact is that Plaintiff failed to exhaust his administrative remedies as to any claims against Larry Lee prior to filing suit in this matter as is required by the PLRA.

3. Here, it is undisputed that Plaintiff's first attempt at the ARP process regarding this matter was rejected. See, ARP # WCCF 16-420, a copy of which is attached hereto as Exhibit "A". Plaintiff's second attempt at the ARP process in no way mentioned, identified, or implicated Larry Lee in the subject incident or grievance. See, ARP # WCCF 16-578, a copy of which is attached hereto as Exhibit "B".

4. The undisputed material fact is Plaintiff did not utilize the two-step ARP provided to inmates by MDOC as it relates to any claims as he may be asserting against Larry Lee and Plaintiff's claims against him are due to be dismissed.

WHEREFORE, PREMISES CONSIDERED, Defendant respectfully requests that this Court grant his Motion for Summary Judgment and enter an order dismissing the instant cause without prejudice. Defendant further prays for such other general relief that this Court deems appropriate.

DATE: AUGUST 29, 2018

LARRY LEE, DEFENDANT

**JIM HOOD, ATTORNEY GENERAL
STATE OF MISSISSIPPI**

BY: J. CHADWICK WILLIAMS
SPECIAL ASSISTANT ATTORNEY GENERAL
MS BAR NO.: 102158

/s/ J. Chadwick Williams

Office of the Attorney General
Civil Litigation Division
Post Office Box 220
Jackson, Mississippi 39205
Telephone: (601) 359-3680
Telefax: (601) 359-2003
Email: cwill@ago.state.ms.us

CERTIFICATE OF SERVICE

I, J. Chadwick Williams, do hereby certify that I have electronically filed the foregoing with the Clerk of the Court using the ECF system, and that I hereby certify that I have mailed, via United States Postal Service, first class postage prepaid, a true and correct copy of the foregoing document in the above-styled and numbered cause to the following non-ECF participant:

Michael Powers
157713
Wilkinson County Correctional Facility
2999 Highway 61 North
Woodville, MS 39669

This, the 29th day of August, 2018.

/s/ J. Chadwick Williams